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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 276

COLUMBUS AND CHICAGO MOTOR FREIGHT, INC.,

Appellant,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA; PERRY McCART, AS A MEMBER AND CHAIRMAN OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA; FRED BAYS, MOIE COOK, AS MEMBERS OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA; DEPARTMENT OF COMMERCE AND INDUSTRIES OF THE STATE OF INDIANA; HENRY F. SCHRICKER, AS CHIEF ADMINISTRATIVE OFFICER OF THE DEPARTMENT OF COMMERCE AND INDUSTRIES OF THE STATE OF INDIANA; M. CLIFFORD TOWNSEND, AS CHIEF EXECUTIVE OFFICER OF THE EXECUTIVE DEPARTMENT OF THE STATE OF INDIANA; DIVISION OF PUBLIC SAFETY OF THE EXECUTIVE DEPARTMENT OF THE STATE OF INDIANA; DONALD F. STIVER, AS SUPERINTENDENT OF STATE POLICE, DEPARTMENT OF STATE POLICE, DIVISION OF PUBLIC SAFETY AND DIRECTOR OF SAFETY OF THE DIVISION OF PUBLIC SAFETY, EXECUTIVE DEPARTMENT, STATE OF INDIANA; OMER S. JACKSON, AS ATTORNEY GENERAL OF THE STATE OF INDIANA; CARROLL O. HOLLEY, AS SHERIFF OF LAKE COUNTY, INDIANA, AND FRED A. EGAN, AS PROSECUTING ATTORNEY OF LAKE COUNTY, INDIANA,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION.

JURISDICTIONAL STATEMENT.

Statutory Provisions Sustaining Jurisdiction.

The Supreme Court of the United States has jurisdiction of this appeal by virtue of Sections 238 and 266 of the Judicial Code as amended by the Act of February 13, 1925 (U. S. C. A., Title 28, Sections 345 and 380).

Statutes of Indiana, the Validity of which Are Involved.

This appeal involves the validity of Sections 6 and 7 of the "Motor Vehicle Act of the State of Indiana" (Chapter 287, Page 1412 of the Acts of 1935, enacted by the General Assembly of the State of Indiana), as interpreted and administered by the Public Service Commission of the State of Indiana.

Section 6 (the pertinent part only) reads as follows:

> "No common carrier, except as herein provided, shall operate motor vehicles upon any public highway of the State of Indiana for the purpose of transporting passengers or property for compensation as a common carrier until after there shall have been obtained from the public service commission a certificate as defined herein, and no certificate shall be issued, except as hereinafter provided until after a public hearing and a consideration of the service, if any, rendered in the territory of the proposed motor vehicle operations by other common carriers; whether by motor vehicle, steam or electric railroad or otherwise * * *."

Section 7 reads as follows:

> "(a) Upon the filing of an application for a certificate as herein defined, the commission shall, within a reasonable time, fix a time and place for public hearing thereon, and the place for hearing shall be in the city of Indianapolis, unless otherwise ordered by the commission. A copy of the notice of hearing shall be mailed to the applicant at the address set out in the application at least ten days before the hearing and any person interested in such proceedings may appear in person or by attorney and offer evidence in support of or in opposition to the application and with or without the filing of formal pleadings.
>
> (b) The applicant shall, at all times, have the burden of proving, by a preponderance of the evidence, except as hereinbefore provided, that public convenience and

necessity requires the proposed operation, and that the proposed operation will not unreasonably impair the existing public service of any authorized common carrier, or common carriers by motor vehicle, or by railroad, steam or electric, then adequately serving the same territory.

(c) If the Commission shall find from the evidence and from such additional investigation as the commission shall cause to be made that public convenience and necessity exists for the service proposed, or any part thereof, the application shall be granted, subject to such terms, restrictions and limitations as the commission may determine, otherwise, the application shall be denied.

(d) In determining whether a certificate shall be granted the commission may, among other things, consider the following:

1. The financial ability of the applicant to furnish adequate service.

2. Whether existing transportation service is adequate.

3. The effect upon existing transportation, and, particularly, whether the granting of such application will or may seriously impair such existing service.

4. The volume of existing traffic over the route proposed by the applicant.

5. The effect and burden upon the highways and the bridges thereon, and the use thereof by the public.

6. Whether the operations will threaten the safety of the public or be detrimental to the public welfare."

Section 2 of said act is the section defining the terms used in the act. The pertinent parts of this section are as follows:

"When used in this act;

(a) The term person shall mean and include any individual or individuals, corporation, firm or co-part-

nership, their lessees, trustees and receivers appointed by any court whatsoever.

(b) The term 'commission' shall mean the public service commission."

• • • • • • •

"(d) The term 'public highway' shall mean any street, alley, road, highway and/or thoroughfare in this state used by the public."

• • • • • • •

"(f) The term 'motor vehicle' shall mean any truck, tractor, trailer, semi-trailer, motor bus or any self-propelled or motor-driven vehicle used upon any public highway of this state for the purpose of transporting persons or property.

(g) The term 'common carrier' shall mean any person who or which undertakes to transport passengers or property, or any class or classes thereof, for the general public by motor vehicle for hire, whether over regular or variable routes."

• • • • • • •

"(i) The term 'certificate' shall mean the certificate of public convenience and necessity issued by the commission to common carriers, intrastate, or the certificate of authority issued by the commission to common carriers, interstate."

Section 4 of said act is the section declaring the purpose of the act which is set forth therein as follows:

"The business of operating as a motor carrier of persons or property for hire upon the highways of this state is declared to be a business affected with the public interest. The rapid increase of motor carrier traffic, and the fact that under existing law many motor trucks, trailers and busses are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that more stringent regulations should be employed to the end that the highways may be rendered safer for the use of the gen-

eral public; that the wear of such highways may be reduced; that inconvenience to other users of the highways may be minimized (;) that minimum hindrance and stoppage to other users of the highways compatible with the needs of the public for adequate transportation service may be effected; that the highway may be safeguarded from improper or unnecessary usage; that operation by irresponsible persons or any other operation threatening the safety of the public or detrimental to the general welfare be prevented; that congestion of traffic on the highways may be minimized and the public highways may serve the best interest of the general public; that the various transportation agencies using the highways of the state may be regulated, adjusted, correlated and coordinated to the end that the public be given the benefit of the most economic and efficient means of transportation by any instrumentalities of transportation which may be suited to such purpose; that no legitimate form of transportation be stifled; that no form of motor transportation lawfully entitled to the use of the highway shall be denied the use thereof; that improvements in the arts be encouraged and through inventions and improvements in design and construction that the most satisfactory and expeditious transportation facilities may be provided for the use of the general public at fair and reasonable cost.

It is therefore declared to be the policy of the legislature of Indiana to promote, encourage, and regulate commerce by motor carriers so as to develop and maintain sound economic conditions for such carrier, promote the public interest, improve the condition and service of all agencies of transportation, and co-ordinate and regulate the same."

Section 5 of said act is the section vesting the power and authority to administer the act in the Public Service Commission. The pertinent parts of this section are as follows:

"The Commission is hereby vested with power and authority to supervise and regulate every motor carrier

subject to the provisions of this act, to fix just and reasonable rates, fares and charges, and to prescribe classifications, rules and regulations pertaining thereto, all of which shall be just and reasonable; to regulate and supervise the schedules, service, safety, methods and hours of operating the same."

* * * * * * *

"The commission shall have the power to hear all petitions, applications or motions filed with the commission. Such hearings may be conducted by the commission, by any member of the commission or by any examiner authorized by the commission. In case the hearing is conducted by an examiner, such examiner shall be required to promptly report to the commission the facts established by the evidence and to submit a suggested order, showing the findings and a decision therein, to the commission. Such orders recommended by such examiner shall be held for not less than ten days during which time interested parties may file written exceptions thereto. In case no exceptions are filed, the finding of facts and decision in form of order suggested by such examiner shall be the order of the commission unless the commission, in its discretion, directs otherwise.

After a decision, order or requirement has been made by the commission in any proceeding under this act, any party thereto may make application to the commission for reconsideration or rehearing of the same, or of any matter determined therein, and it shall be lawful for the commission, in its discretion, to grant such reconsideration or rehearing if sufficient reason therefor be made to appear. Applications for reconsideration or rehearing shall be governed by such rules and regulations as the commission may prescribe. If, after reconsideration or rehearing, it shall appear that the original decision, order or requirement is in any respect unjust and unwarranted, the commission may change or modify the same accordingly. Any decision, order or requirement made after such reconsideration or re-

hearing shall be subject to the same provisions as the original decision, order or requirement."

Section 29 of said act provides:

"Any person who violates any provisions of this act or the rules and regulations of the public service commission concerning motor vehicles for hire, * * * shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor exceeding five hundred dollars."

Nature of the Case.

This is an appeal from the final decree and order of the District Court of the United States, Northern District of Indiana, South Bend Division, a Three-Judge Court composed of the Honorable Will M. Sparks and the Honorable Walter Treanor, Judges of the United States Circuit Court of Appeals, Seventh Circuit, and the Honorable Thomas W. Slick, Judge of the United States District Court, Northern District of Indiana, South Bend Division, entered and filed on June 29, 1939 in the cause entitled: Columbus and Chicago Motor Freight, Inc., Plaintiff vs. Public Service Commission of the State of Indiana, et al., Defendants, Equity No. 583.

Appellant, a common carrier by motor vehicle operating across the State of Indiana in interstate commerce only, filed its amended bill of complaint in said cause on the 15th day of November, 1937, praying for an interlocutory restraining order and, after hearing, a permanent injunction preventing the enforcement of the 'Motor Vehicle Act of the State of Indiana' by the Public Service Commission of the State of Indiana and other appellees, as administrative and enforcement officers of the State of Indiana, insofar as said act imposes upon appellant the obligation of obtaining a certificate from the said Public Service Commission au-

thorizing it to operate in interstate commerce only over (1) U. S. Highway 30 between the Ohio-Indiana line and Fort Wayne, Indiana, (2) Indiana Highway 2 between Fort Wayne, Indiana and Ligonier, Indiana, (3) U. S. Highway 6 between Ligonier, Indiana, and the junction of U. S. Highways 6 and 41, and (4) U. S. Highway 41 between the junction of said highways and the Indiana-Illinois line,—the said Public Service Commission having theretofore arbitrarily denied an application for a certificate to operate in interstate commerce only over said highways which was filed by appellant, as set forth in its amended bill of complaint.

Upon the filing and presentation of said amended bill of complaint, the District Judge granted and issued a temporary restraining order which remained in effect until it was dissolved on the 29th day of June, 1939 by the subsequently convened Three-Judge Court, constituted as set forth above.

Appellant contends that the 'Motor Vehicle Act of the State of Indiana', as administered and enforced by appellees, operates to deprive it of its property without due process of law and otherwise operates unconstitutionally, as specifically set forth in its amended bill of complaint filed in said cause and in its assignment of errors filed herewith.

Appellant also contends that said act, not being cooperatively administered, was superseded as to interstate commerce by the 'Motor Carrier Act, 1935,' enacted by Congress, under which appellant seasonably filed a proper application with the Interstate Commerce Commission.

Said cause was submitted to the Three-Judge Court on appellant's amended bill of complaint praying for a permanent restraining order and a declaratory judgment, appellees' motion to dismiss, a stipulation of counsel as to certain facts, and the evidence and exhibits introduced by appellant and appellees at the hearing of said cause.

The Three-Judge Court, by its final decree and order entered on the 29th day of June, 1939, dissolved the temporary restraining order theretofore issued by the District Judge and dismissed appellant's amended bill of complaint.

Subsequently, on the 27th day of September, 1939, appellant filed a motion for a new trial which was denied by said Court on the 21st day of February, 1940.

The judgment or decree to be reviewed was entered and filed on the 29th day of June, 1939. A copy thereof, and a copy of the temporary restraining order issued on the 15th day of November, 1937, are attached hereto. The petition or application for appeal to the Supreme Court of the United States was presented and filed on May 20, 1940.

The questions raised are substantial because they involve the constitutionality of the 'Motor Vehicle Act of the State of Indiana', as administered by the Public Service Commission of the State of Indiana, and the effect upon said act of the 'Motor Carrier Act, 1935' enacted by Congress. Appellant's entire business, depending as it does upon its use of the highways of Indiana, is also at stake.

Cases Sustaining the Jurisdiction of the Court.

The following cases, among others, are believed to sustain the jurisdiction of the Court:

Dickinson vs. *Stiles*, 246 U. S. 631, 38 S. Ct. 415, 62 L. Ed. 908; *First National Bank of Guthrie Center* vs. *Anderson*, 46 S. Ct. 135, 269 U. S. 341, 70 L. Ed. 295; *H. P. Welch Co.* vs. *State of New Hampshire*, 59 S. Ct. Rep. 438; Pa. *RR. Co.* vs. *Public Service Commission of Pa.*, 250 U. S. 566; *Atlantic Coast Line RR. Co.* vs. *Georgia*, 234 U. S. 280; *Napier* vs. *Atlantic Coast Line RR. Co.*, 272 U. S. 605; *Texas & Pac. Ry. Co.* vs. *Rigsby*, 241 U. S. 33; *Kelly* vs. *Washington*, 302 U. S. 1; *Sprouls* vs. *Binford*, 286 U. S. 374; *South Carolina State Highway Department* vs. *Barnwell Bros.*,

Inc., 303 U. S. 177; *Northern Pacific RR. Co.* vs. *Public Works Department*, 268 U. S. 39; *Blue Field Improvement Co.* vs. *Public Service Commission*, 262 U. S. 679; *Bell's Gap R. R. Co.* vs. *Pa.*, 134 U. S. 232; *Pa. Coal Co.* vs. *Mahon*, 260 U. S. 393; 43 S. Ct. 158; *Frost & Frost Trucking Co.* vs. *Railroad Commission*, 271 U. S. 583, 46 S. Ct. 605; 47 A. L. R. 457; *Smith* vs. *Cahoon*, 283 U. S. 553, 51 S. Ct. 582; *Prendergast* vs. *New York Telephone Co.*, 262 U. S. 43, 43 Supreme Court 466, 67 L. ed. 853; *Oklahoma Natural Gas Co.* vs. *Russell*, 43 Supreme Court 353, 261 U. S. 290, 67 L. ed. 659; *Hamilton* vs. *University*, 293 U. S. 245, 79 L. ed. 343; *Seaboard Air Line Railway Co.* vs. *Blackwell*, 244 U. S. 310, 37 Sup. Ct. 640; *Nashville, Chattanooga & St. Louis Ry. Co.* vs. *Walters*, 294 U. S. 405, 55 Sup. Ct. 486; *Ry. Commission of California* vs. *Southern Pacific Ry. Co.*, 264 U. S. 331, 44 Sup. Ct. 376; *Hall* vs. *DeCuir*, 95 U. S. 485; *South Covington & Cincinnati St. Ry. Co.* vs. *Covington*, 235 U. S. 537, 35 Supreme Court 158; *Kansas City Southern Ry. Co.* vs. *Kaw Valley Drainage District*, 253 U. S. 75, 34 Supreme Court 564; and *M. K. & T. Ry. Co.* vs. *Texas*, 245 U. S. 484, 38 Supreme Court 178.

Respectfully submitted,

PHILIP LUTZ,
ALVIN C. JOHNSON,
JOHN P. LUTZ,
LUTZ, JOHNSON AND LUTZ,
728-734 Circle Tower,
Indianapolis, Indiana.

May 20, 1940.

TAYLOR C. BURNESON,
3500 A. I. U. Building,
Columbus, Ohio,
Solicitors for Appellant.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

IN EQUITY. NO. 583

COLUMBUS AND CHICAGO MOTOR FREIGHT, INC.,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA, PERRY MCCART, as a Member and Chairman of The Public Service Commission of the State of Indiana; FRED BAYS, MOIE COOK, as Members of the Public Service Commission of the State of Indiana; DEPARTMENT OF COMMERCE AND INDUSTRIES OF THE STATE OF INDIANA, HENRY F. SCHRICKER, as Chief Administrative Officer of the Department of Commerce and Industries of the State of Indiana; M. CLIFFORD TOWNSEND, as Chief Executive Officer of the Executive Department of the State of Indiana; DIVISION OF PUBLIC SAFETY OF THE EXECUTIVE DEPARTMENT OF THE STATE OF INDIANA, DONALD F. STIVER, as Superintendent of State Police, Department of State Police, Division of Public Safety and Director of Safety of the Division of Public Safety, Executive Department, State of Indiana; OMER S. JACKSON, as Attorney General of the State of Indiana; CARROLL O. HOLLEY, as Sheriff of Lake County, Indiana; FRED A. EGAN, as Prosecuting Attorney of Lake County, Indiana.

ORDER

Whereas, in the above entitled cause a verified amended bill of complaint for a perpetual injunction has been filed, and it having appeared from said amended bill that there is danger of immediate and irreparable injury, loss or damage being caused to the plaintiff before notice can be served and a hearing had thereon, unless said defendants are, pending such hearing, restrained as herein set forth, for the reason that the defendants and each of them are undertaking to enforce the provisions of the Motor Vehicle Act of the State of Indiana, as interpreted by the Public Service Commission against this plaintiff doing an interstate business exclusively by having the State Police and local officers stop its vehicles while engaged in interstate commerce and threatening the drivers thereof with arrest and have arrested drivers for the reason that the plaintiff is operating allegedly contrary to the laws of the State

of Indiana; that said defendants are enforcing said M
Vehicle Act of the State of Indiana according to their
interpretation thereof and are causing the vehicles of
plaintiff to be stopped on the highways in the State
Indiana, the drivers to be arrested and the prescribed
alties of the said Indiana Act imposed upon them when
such vehicles enter the State of Indiana and traverse
highways thereof in pursuance of plaintiff's interstate b
ness, thereby subjecting them to innumerable crim
prosecutions and to the imposition and payment of
heavy penalties prescribed by said law and restricting,
terfering with and placing unreasonable and unauthor
burdens upon interstate commerce. That said enforcem
as interpreted by the defendants is causing plaintiff i
parable damage and injury, loss of patronage, the dest
tion of its business and the loss of a substantial part o
capital invested in such business, for which it has no
quate remedy at law. That the plaintiff and its emplo
are being prosecuted in various counties in Indiana
one and the same alleged offense, namely, the alleged
lation of the Indiana Act, and the plaintiff is being
jected to great expense in the employment of counse
the preparation for the defense of said prosecutions.
the plaintiff is required to furnish bond, bear the exp
of its employees and their losses of time and the loss ca
by the interference with its business in defending the
and prosecutions and arranging for the release upon
of its servants, agents, employees and representati
That said prosecutions and threats of further prosecut
have interfered and are interfering with plaintiff's ob
ing business and carrying on its business, which is l
established. That continued prosecutions and threat
prosecution will involve great losses and injury to
plaintiff, without any opportunity of recovery.

Now Therefore, Take notice that you, Public Ser
Commission of the State of Indiana; Perry McCart,
member and Chairman of the Public Service Commis
of the State of Indiana; Fred Bays and Moie Cook, as m
bers of the Public Service Commission of the State of I
ana; Department of Commerce and Industries of the S
of Indiana; Henry F. Schricker, as Chief Administra

Officer of the Department of Commerce and Industries of the State of Indiana; M. Clifford Townsend, as Chief Executive Officer of the Executive Department of the State of Indiana; Division of Public Safety of the Executive Department of the State of Indiana; Donald F. Stiver as Superintendent of State Police, Department of State Police, Division of Public Safety and Director of Safety of the Division of Public Safety, Executive Department, State of Indiana; Omer S. Jackson, as Attorney General of the State of Indiana; Carroll O. Holley, as Sheriff of Lake County, Indiana, and Fred A. Egan, as Prosecuting Attorney of Lake County, Indiana, defendants herein, and each of you, your servants, agents, attorneys and counsellors, are hereby temporarily restrained and enjoined from attempting to enforce the said Motor Vehicle Act of the State of Indiana or any of the provisions thereof against the plaintiff, its agents, servants or employees.

This restraining order will remain in force until the further order of this or a three judge court.

Let a copy of this restraining order be attached to the subpoena herein and served herewith.

Dated this fifteenth day of November, 1937.

(Signed) THOMAS W. SLICK,
Judge, United States District Court.

EXHIBIT "B".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION.

In Equity No. 583.

COLUMBUS AND CHICAGO MOTOR FREIGHT, INC.

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA ET AL.

Special Findings of Facts and Conclusions of Law Thereon.

The Court, having heard the evidence and argument of counsel for the parties, makes the following finding of facts in conformity with Equity Rule No. 70½.

(1). The complainant, Columbus and Chicago Motor Freight, Inc., is a corporation duly organized and existing under the laws of the State of Ohio, and is a resident of the State of Ohio.

(2). The defendants, Perry McCart, Fred Bays and Moie Cook are members of the Public Service Commission of Indiana; Henry F. Schricker is chief administrative officer of the Department of Commerce and Industries of the State of Indiana; M. Clifford Townsend is the Chief Executive Officer of the Executive Department of the State of Indiana; Donald F. Stiver is Superintendent of the State Police, Division of Public Safety and Director of Safety of the Division of Public Safety, Executive Department, State of Indiana, the Indiana State Police are vested with all necessary police power, under the Indiana Statutes, to enforce the provisions of the laws of the State of Indiana for the regulation and use of automobiles, motor vehicles and other vehicles; Omer S. Jackson is Attorney General of the State of Indiana, and by statute, is made general counsel of the Public service commission; Carroll O. Holley is Sheriff of Lake County, Indiana; and Fred A. Egan is Prosecuting Attorney of Lake County, Indiana. All of the defendants are residents of the State of Indiana.

(3). This is a suit in equity of a civil nature and the questions therein arise under the Constitution and laws of the United States. In the amended bill of complaint, the complainant seeks to enjoin and restrain the enforcement officers of the State from causing the arrest of employees of the complainant for violation of certain motor vehicle laws of the State of Indiana, and to restrain the officers from proceeding with certain criminal actions already commenced. The complainant claims a legal right, under the Federal Motor Carrier Act of 1935, to operate as a common carrier of property, interstate, for hire between Columbus, Ohio, and Chicago, Illinois, over the following route across the State of Indiana:

> "Over Highway No. 30 from the Ohio-Indiana State line to Fort Wayne, Indiana, then over Highway No. 2 to Junction with Highway No. 6, then over Highway

No. 6 to Junction with Illinois Highway No. 49, then over Illinois Highway No. 49 to Chicago, and return over same route."

(4). On October 17, 1934, the complainant received from the Public Utilities Commission of Ohio a certificate authorizing it to operate over certain routes in the State of Ohio in interstate commerce. Said routes included Highway No. 30 from points in Ohio to the Ohio-Indiana State Line.

Later, on June 14, 1935, the Public Utilities Commission of Ohio granted the complainant a certificate to transport property over irregular routes from any point within the State of Ohio to any point without the State of Ohio, except over Highways Nos. 2 and 6 between Lorain and Cleveland and on Highway No. 20 between Toledo and Ashtabula, and against furnishing the same kind of service furnished by steam or electric transportation companies, and against furnishing the same service of other motor transportation companies operating between fixed termini or over regular routes, and against operating with equipment not listed with the Commission and unless tax is paid thereon.

The Public Utilities Commission of Ohio is the state agency of Ohio with authority to authorize motor carriers to use the public highways of the State of Ohio and to regulate the operations of motor carriers and the complainant has been operating in Ohio under such certificates since October, 1934.

(5). On the 27th day of August, 1934, the complainant, Columbus and Chicago Motor Freight, Inc., filed its application with the defendant, the Public Service Commission of the State of Indiana for a certificate of authority to operate as a common carrier of property interstate over certain public highways and streets of the State of Indiana, including Highways Nos. 20 and 30. Said application came on for hearing on October 5, 1934, and the Commission after considering the proposed business of the applicant, found that the use of the highways over the route as proposed by applicant would increase the dangers to the traveling public and would constitute an undue burden on the highways and necessarily interfere with their use by the traveling

public. For the above reasons and in order to minimize the congestion of traffic on the highways, the application of the complainant was denied by the Public Service Commission.

(6). On January 17, 1935, the complainant filed another application with the Public Service Commission of Indiana, in its Cause No. 2537-M, applying for a certificate as a beginning operator to carry property as a common carrier over the following route:

> From the Ohio-Indiana State line on Highway No. 30 to Fort Wayne and then on Highway No. 2 to Ligonier, Indiana, and then on No. 2 or No. 6 to the junction of Highways Nos. 2 and 6 near Westville, Indiana, then on Highway No. 6 to Calumet Avenue in Hammond, Indiana, then north on Calumet Avenue to Indianapolis Boulevard, and then in a northwesterly direction to the Indiana-Illinois state line.

Such proceedings were had on application that it came on for hearing before the Public Service Commission on April 1, 1935 and the Complainant appeared by its attorney, and its president and vice-president, and introduced evidence the substance of which was that said complainant did not own any trucks in which it proposed to carry property interstate and that complainant had contracted with the "Motor Way" to carry its freight, but complainant asserted that it expected to lease trucks to operate over said route if granted a certificate. The trucks to be used were owned by private people who would receive seventy per cent of the freight charges and thirty per cent would be kept by the complainant corporation.

The Public Service Commission, having heard and considered the evidence and having investigated the traffic and the highway conditions, found that the applicant proposed to engage in interstate business between Columbus, Ohio, and Chicago, Illinois. The Commission further found that the applicant was seeking the use of certain public highways in the State of Indiana beyond the ordinary use of the same in furtherance of its private business and that the proposed operation was contrary to the public welfare of

the state and that, in as much as the property was already moving in interstate business, to deny the certificate of necessity and convenience would not unnecessarily interfere with interstate business. The application of the complainant in said cause was denied by the Commission.

Later, on April 12, 1935, the complainant filed its petition for reconsideration of said finding and order of the Commission and, on April 26, 1935, the petition for rehearing was overruled.

(7). On or about the 13th day of May, 1935, the complainant, by his attorney, tendered and offered to pay the Public Service Commission the amount of registration fees required by said Motor Carrier Act of Indiana and by the laws of the State of Indiana and he also offered the Bureau of Motor Vehicles of the State of Indiana to pay the weight tax of sixty cents per hundred pounds for each and all of the motor vehicles used by the complainant in its business. Each of the offers and tenders were refused by the Public Service Commission and by the Bureau of Motor Vehicles for the reason that the complainant had no authority to operate over the public highways of the State of Indiana on the routes asked by it across the State of Indiana, and its vehicles were not registered with the Public Service Commission.

The complainant, at the time of offering the fees for registration of the vehicles used by it, offered also to give to the Public Service Commission of Indiana a policy of insurance indemnifying the public against any loss that might be caused by the negligence of the complainant in the operation of motor vehicles on the public highways of the state. The Public Service Commission refused to accept said insurance policy for the reason that said complainant did not have any authority to operate over the highways of the State of Indiana.

(8). The laws regulating the operation of motor carriers for hire in the State of Indiana were enacted in 1925 and motor carriers operating for hire were declared to be public utilities and the Public Service Commission of Indiana was vested with authority to regulate motor carriers for

hire and, since such time, the authority to permit the operators of motor carriers for hire on the public highways of the State, and their regulation has been vested in the Public Service Commission of Indiana or its successor, the Public Service Commission.

(9). The present Motor Carrier Act is Chapter 287 of the Acts of 1935, and became effective May 1, 1935.

The Act provides in section 4 that the business of operating as a motor carrier of persons or property for hire upon the highways of the state, is a business affected with the public interest. Said statute contains the following further provision in Section 4 thereof:

"The rapid increase of motor carrier traffic, and the fact that under existing law many motor trucks, trailers and busses are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that more stringent regulations should be employed to the end that the highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that inconvenience to other users of the highways may be minimized (;) that minimum hindrance and stoppage to other users of the highways compatible with the needs of the public for adequate transportation service may be effected; that highway may be safeguarded from improper or unnecessary usage; that operation by irresponsible persons or any other operation threatening the safety of the public or detrimental to the general welfare be prevented; that congestion of traffic on the highways may be minimized and the public highways may serve the best interest of the general public; that the various transportation agencies using the highways of the state may be regulated, adjusted, correlated and coordinated to the end that the public be given the benefit of the most economic and efficient means of transportation by any instrumentalities of transportation which may be suited to such purpose; that no legitimate form of transportation be stifled; that no form of motor transportation lawfully entitled to the use of the highway shall be denied the use thereof; that improvements in the arts be encouraged and through inventions and

improvements in design and construction that the most satisfactory and expeditious transportation facilities may be provided for the use of the general public at fair and reasonable cost.

"It is therefore declared to be the policy of the legislature of Indiana to promote, encourage and regulate commerce by motor carriers so as to develop and maintain sound economic conditions for such carrier, promote the public interest, improve the condition and service of all agencies of transportation, and co-ordinate and regulate the same."

By Section 5 of the Motor Carrier Act of 1935, the Public Service Commission was and is now vested with power and authority to supervise and regulate every motor carrier subject to the provisions of this Act. Section 6 provides as follows:

"No common carrier, except as herein provided, shall operate motor vehicles upon any public highway of the State of Indiana for the purpose of transporting passengers or property for compensation as a common carrier until after there shall have been obtained from the public service commission a certificate as defined herein, and no certificate shall be issued, except as hereinafter provided until after a public hearing and consideration of the service, if any, rendered in the territory of the proposed motor vehicle, steam or electric railroad or otherwise; *Provided, however,* That all certificates heretofore granted by the commission under acts repealed by this act, including those assigned by an individual or individuals to corporations and in which corporations said individual or individuals retain a controlling interest and under which certificates the holders are now legally operating shall continue in full force and effect as granted or amended except that in all other respects the holders of said certificates shall be subject to the provisions of this act: *Provided, however,* That nothing herein shall relieve such holders of said certificates from filing their applications and from registering their vehicles as by this act required and of paying the fees required for filing such applications as provided in section 34 hereof, and from paying the registration fees required for

such vehicles as provided for in section 35 hereof, and the commission may grant the application without a public hearing thereon: and *Provided, further,* That nothing herein shall prevent the commission from cancelling or revoking any such certificates for cause as otherwise in this act provided.

"Any person operating motor vehicles as a common carrier under a certificate issued by the commission prior to the effective date of this act, who fails to file with the commission, within sixty days from the taking effect of this act, his application for a certificate to operate motor vehicles under the provisions of this act shall be deemed to have surrendered his certificates heretofore issued by the commission and such certificate shall be terminated, cancelled, and revoked."

(10). Section 7 of said Motor Carrier Act provides in part as follows:

"(d). In determining whether a certificate shall be granted, the commission may, among other things, consider the following:

1. The financial ability of the applicant to furnish adequate service.

2. Whether existing transportation service is adequate.

3. The effect upon existing transportation, and, particularly, whether the granting of such application will or may seriously impair such existing service.

4. The volume of existing traffic over the route proposed by the applicant.

5. The effect and burden upon the highways and the bridges thereon, and the use thereof by the public.

6. Whether the operations will threaten the safety of the public or be detrimental to the public welfare."

Sections 22, 23, 24, 25 and 26 of said Motor Carrier Act provide as follows:

"Sec. 22. No person, as defined in this act, shall operate any motor vehicle over the highways of this state for hire

without first having obtained a certificate or permit from the commission so to do, and having obtained registration plate or card for each vehicle, as provided in this act."

"Sec. 23. Any certificate or permit, upon application of the holder thereof, in the discretion of the commission, may be amended or revoked in whole or in part, or may, upon complaint or on the commission's own initiative, after notice and hearing, be suspended, changed or revoked in whole or in part for willful failure to comply with any provision of this act, or with any lawful order, rule or regulation prescribed by the commission, or with any term, condition or limitation of such certificate or permit."

"Sec. 24. The highway commission, upon the request of the commission, shall furnish information relating to the highway or highways designated in applications for certificates and permits filed with the commission as well as such other information as the commission may deem pertinent to any hearing."

"Sec. 25. The provisions of this act shall apply alike to persons engaged in the transportation of persons or property over the highways of the State of Indiana whether such transportation be interstate or intrastate, except in so far as this act may contravene the constitution or the laws of the United States."

"Sec. 26. Before any common carrier or contract carrier, intrastate or interstate, shall operate any motor vehicle upon any public highway in this state, he shall register the same with the commission and pay the registration fees provided in section 35 of this act."

(11). Section 27 of said Act provides that it shall be the duty of every non-resident common carrier to file and keep on file with the Commission a designation in writing of the name and post office address of a citizen and resident of the State of Indiana on whom service of notice or orders may be made.

Section 28 provides that the Commission shall have power and authority to designate from time to time the public highways as routes over which carriers subject to the provisions of this Act may or may not operate so as to prevent congestion and give safety to the persons or property upon

such public highways and provides for the enforcement of its orders.

(12). The Motor Vehicle Act of the State of Indiana provides in Section 39, that any corporation feeling itself aggrieved with any decision of the commission, might commence an action in any court of competent jurisdiction against the Commission to vacate or set aside any order or decision upon the ground that such order or decision is insufficient, unreasonable or unlawful. It is further provided that such action should have precedence over civil cases of a different nature pending in any such court and that such action to set aside or vacate the order of the Commission must be exercised within sixty days of the rendition of such decision or order of such Commission. The Complainant never commenced any such an action to set aside any order of the Public Service Commission made with respect to its right to operate within the State of Indiana.

(13). The Motor Vehicle Act of the State of Indiana, in Section 29, contains the following provision:

"Sec. 29. Any person who violates any provision of this act or the rules and regulations of the public service commission concerning motor vehicles for hire, or any person, whether carrier, shipper, or any officer, employee, agent or representative thereof, who shall knowingly offer, grant or give or solicit, accept or receive any rebate, consideration or discrimination in violation of any provision of this act, or who, by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, account, claim, certificate, affidavit, deposition, lease or bill of sale, or by any other means or device shall knowingly and wilfully assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this act for less than the rate, fare or charge, approved by the commission, or who shall knowingly and willfully, by any such means or otherwise fraudulently seek to evade or defeat regulations as in this act provided for motor carriers, shall be

deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor exceeding five hundred dollars."

The defendants, the Public Service Commission, and the State Police of the State of Indiana, are undertaking and attempting to enforce the provisions of the Indiana law as set out in this finding and to prevent complainant from operating motor vehicles for hire carrying on interstate or intrastate commerce across the State of Indiana over the above route and the defendants, at all times, have undertaken and are proposing to enforce the Motor Vehicle laws of the State of Indiana and to arrest the drivers and operators of any motor vehicle operated for hire without authority from the Public Service Commission of Indiana and the arrests of the drivers of the vehicles operated by the complainant in Indiana were made pursuant to authority of the State Police and the Public Service Commission in the discharge of their statutory duty.

(14). In an investigation by the State Highway Commission of the State of Indiana, it was found that from July 1, 1937 to March 1, 1938, there were 61 motor vehicle accidents, exclusive of those in cities of over 3,500 population, in which either a truck and a passenger car or two trucks were involved, and that such accidents comprised 25.1% of all motor carrier accidents over said route.

(15). The court further finds that in a traffic count conducted by the State Highway Commission of Indiana, during a period from July 1, 1936 to July 1, 1937, at certain stations along the route claimed by complainant, outside of cities, the annual average number of vehicles passing such stations in twenty-four hours appeared as follows:

Station No. 36 on State Highway No. 30, 24 miles east of Fort Wayne, Indiana, 5,797 vehicles.

Station No. 34 on State Highway No. 2, 2 miles west of Fort Wayne, 2,343 vehicles.

At other stations along said route the traffic count showed an average of from 2,347 vehicles to 1,639 vehicles in a 24 hour period.

(16). The Public Service Commission, defendant, in its administration of the provisions of the Motor Carrier Act, has granted permits and certificates to contract and common carriers and there were in force on November 1, 1937, authorizations to use said Highways, Nos. 6 and 2 and 30, or part of said highways, 271 interstate permits or certificates, and 103 intrastate permits or certificates. The number of vehicles having a right to operate over said highways was not given but said authorized carriers as of November 1, 1937 were fairly representative of periods before and after that date.

(17). The Public Service Commission, defendant, in refusing to grant certificates of convenience and necessity to the complainant, did not base its decision and order upon the question of convenience and necessity with respect to interstate commerce and did not discriminate against interstate commerce or place any undue burden on interstate commerce. The action and order of the Public Service Commission related solely to the use of the public highways of the State of Indiana, and to the safety and comfort of those who used the highways along the route claimed by complainant, as ordinary travelers and those carriers already enjoying and having authority to use said routes.

(18). On the 21st day of October, 1937, Harold R. Longwell, Ray Kaiser and Fern Buckingham and Leslie Foster and Don Wilson, who were driving trucks for the complainant and were engaged in driving motor vehicles in transportation of freight in interstate commerce, from Chicago, Illinois to Columbus, Ohio, through the State of Indiana, upon the public highways thereof, and while engaged in such transportation for the complainant, were each arrested by the Indiana State Police in Ligonier, Indiana, on the charge of operating motor trailers for hire through the State of Indiana without having said vehicles registered with the Public Service Commission of Indiana and without having authority from the Public Service Commission of Indiana to operate as common carriers of property.

Later, on October 26, 1937, and at other dates and times, drivers employed and operating for the complainant, were

also arrested at other places in the State of Indiana by the State Police on the Charge of operating motor vehicles for hire through the state and on the public highways thereof without having their vehicles registered with the Public Service Commission of Indiana. Said drivers were arraigned in courts of Mayors or Justices of the Peace and were required to give bond to answer said charges and said courts would have heard and proceeded with said causes, except for the temporary restraining order issued in this suit. It is the intention of the defendants to continue to enforce the Motor Vehicle Laws of the State of Indiana, and in making the arrests, the State Police were acting under authority of the State Motor Vehicle laws.

(19). The Federal Motor Carrier Act of 1935 became a law on August 9, 1935 and became effective October 1, 1935.

Prior to February 12, 1936, and within the time required by the Federal Motor Carrier Act, the complainant filed with the Interstate Commerce Commission, under Section 206 of such Act, known as the "Grandfather clause", an application to operate in accordance with said Section 206 of the Act.

Said application was numbered MC1470.

On the 22nd day of November, 1937, the Interstate Commerce Commission, Division 5, made the following order on the application of the complainant:

Order

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 22nd day of November, A. D. 1937.

No. MC 1470

Application of Columbus and Chicago Motor Freight, Inc., Columbus, Ohio

After due investigation:

It appearing, That the applicant in accordance with the requirements of Section 206 of the Motor Carrier Act, 1935,

including due service, made application for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle as set forth below, and that the said applicant was in bona fide operation in such manner on June 1, 1935, and has so operated since that time; and the Commission so finding; therefore,

It is ordered, That upon full compliance by the said applicant, prior to the effective date of this order, with the requirements of Sections 215, 216, and 217 of the said Act, and the rules and regulations prescribed by the Commission thereunder, governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, and governing the construction and filing of common carrier rate publications, a certificate of public convenience and necessity shall be issued to the said applicant on the effective date of this order, or at such later date as the Commission may designate, authorizing it to engage in interstate or foreign commerce, as a common carrier by motor vehicle of the commodities indicated, over regular routes, between fixed termini, and to and from intermediate points, as specified below:

Commodities generally, except those of unusual value, and except high explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

Between Columbus, Ohio, and Chicago, Ill.:

From Columbus over Ohio Highway 31 to Kenton, Ohio, thence over U. S. Highway 30S to Lima, Ohio, thence over Ohio Highway 65 to Cairo, Ohio, thence over U. S. Highway 30N to Delphos, Ohio, thence over U. S. Highway 30 to Ft. Wayne, Ind., thence over Indiana Highway 2 to junction U. S. Highway 6, thence over U. S. Highway 6 to junction Illinois Highway 49, thence over Illinois Highway 49 to Chicago, and return over the same route.

From Columbus over U. S. Highway 40 to Springfield, Ohio, thence over Ohio Highway 4 to Dayton, Ohio, thence over U. S. Highway 25 to Lima, thence to Chicago as specified above, and return over the same route.

All intermediate points.

It is further ordered, That in the event said applicant has not complied with said requirements, rules, and regulations on the effective date of this order, or at such later date as the Commission may designate, consideration will be given to the denial of such certificate and the dismissal of the application therefor.

And it is further ordered, That this order shall become effective the 22nd day of December, A. D. 1937, unless on the Commission's own motion or for good cause shown by applicant or any other party in interest it is otherwise ordered.

By the Commission, division 5.

W. P. BARTEL,
Secretary.

(SEAL)

Later, on the 21st day of December, 1937, the Interstate Commerce Commission ordered that the effective date of its order of December 22, 1937, be stayed pending the further action of the Commission.

On the 17th day of January, 1938, the Interstate Commerce Commission, Division 5, ordered that the matter of application of the Columbus and Chicago Motor Freight, Inc., for a certificate of Public convenience and necessity or permit, under Docket MC 1470, be referred to Joint Board No. 58 for hearing on the 14th day of February, 1938. Said application of the complainant was heard before the same Joint Board on February 14, 1938, and has not been decided or disposed of but is still pending before said Board.

(20). The Court finds that the complainant was not in bona fide operation by motor carrier over the route claimed by him across the State of Indiana, either on June 7, 1935 or at the time he made application to the Interstate Commerce Commission, and during all such times the complainant was making use of the Public streets and highways of the State of Indiana without any right or authority from the State of Indiana.

WILL M. SPARKS,
WALTER TREANOR,
THOS. W. SLICK.

CONCLUSIONS OF LAW

Upon the foregoing facts, the Court finds the law to be as follows:

1. The law of the case is with the defendants.

2. The complainant, as a motor carrier for hire, was not entitled to operate over the route claimed by it across the State of Indiana, and the complainant is not entitled to the interlocutory injunction as prayed for, and that the temporary restraining order heretofore granted without notice be dissolved and set aside.

3. That the action of the defendants in arresting or causing the arrest of the complainant did not violate any rights of the complainant under the Constitution or laws of the United States.

4. That the amended complaint of the complainant is without equity and should be dismissed.

5. That the costs in this case, taxed at $, should be taxed against the complainant.

Dated at South Bend, Indiana, this 29 day of June, 1939.

WILL M. SPARKS,
WALTER TREANOR,
THOS. W. SLICK.

EXHIBIT "C".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

Equity No. 583

COLUMBUS AND CHICAGO MOTOR FREIGHT, INC.,

VS.

PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA, ET AL.

The Court having heard the evidence and argument of counsel for the parties, and having this day filed Findings of Fact and Conclusions of Law,

It is Therefore Ordered that judgment be entered in favor of the defendants; that the temporary restraining order heretofore granted be dissolved; and that the amended complaint of the complainant be dismissed. Exception to complainant.

(Signed) WILL M. SPARKS,
Judge, U. S. Circuit Court of Appeals,
(Signed) WALTER TREANOR,
Judge, U. S. Circuit Court of Appeals,
(Signed) THOMAS W. SLICK,
Judge, U. S. District Court.

June 29, 1939.

EXHIBIT "D".

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Equity No. 583

COLUMBUS AND CHICAGO MOTOR FREIGHT, INC., *Plaintiff,*

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA, ET AL.,
Defendants.

Motion of Columbus and Chicago Motor Freight, Inc., for a new trial denied.

Dated this 21st day of February, 1940.

(Signed) WILLIAM M. SPARKS,
(Signed) WALTER E. TREANOR,
(Signed) THOMAS W. SLICK.